

PRIMER

FOR CHARTER SCHOOL AUTHORIZERS:

SPECIAL EDUCATION REQUIREMENTS AND INCLUDING STUDENTS WITH DISABILITIES IN CHARTER SCHOOLS

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National Association of State Directors of Special Education, Inc.

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Although the charter schools movement has grown rapidly since its beginning in the early 1990s, there is very little recorded information available on the challenges related to implementing special education in this new type of public school. The best source of information is direct input from those working in the field. To tap this source, SPEDTACS convened three regional state team meetings to gather the data that served as the basis of the project's print and electronic technical assistance tools. Each regional meeting brought together teams of professionals involved with charter schools and special education in four or five states. The teams spent two days collaborating with the project team in designing the structure and content of the project's technical assistance materials. They shared their experiences with special education in charter schools and identified successful practices to help charter schools develop their capacity to meet their special education responsibilities. The project team is sincerely grateful for the time and effort the state team members devoted to the design and final review of this work.

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PREFACE

I have always known that telling charter operators about the law alone would be insufficient. I try to talk about why they started the school and that all students should be able to derive benefit from this. They should think of it this way—as you are constructing the ship of education, you should see special education not as a little boat you are towing behind or along side, but as part of the beams and planks that structure the ship.

— Charter School Director of Special Education

The ship building metaphor is an apt description of the charter school development process. There are several elements that are necessary for the ship to sail and reach its final destination. The blueprints, materials, crew and course all need to be designed, purchased, and put in place to get the ship out of dry dock. If critical parts of the ship are not considered in its design and development, it may or may not reach its final port. Likewise, successfully implementing special education is key to a charter school reaching its desired destination—success with all the students who choose to attend that charter school.

Several research studies have documented issues related to charter school development. A few have specifically addressed how charter schools are implementing special education. These studies have examined whether charter schools are integrating special education into the design of their “ship of education” or if special education is simply being towed behind. Findings from the studies suggest that for many charter schools, special education is following behind—often due to a lack of information and/or the technical assistance necessary to integrate it into the design of the school. In addition, for those associated with the development and operation of charter schools, there is a lack of information about the requirements that surround special education and what they mean for students with disabilities. This lack of information and understanding about how special education is integrated into the charter school design

can negatively impact learning for students with disabilities. It may also create legal liability for the charter school itself.

Ensuring that special education is one of the “beams and planks that structure the ship” requires the information and understanding of special education and the role it plays in the education of students with disabilities. Special education is not a choice for any public school in America—it is a right for any student with a disability. As such, there are requirements and procedures that all schools must understand and implement to ensure students with disabilities receive a free appropriate public education.

This series of primers is developed to provide background knowledge and resources for the “shipbuilders” of charter schools. The primers include resources to assist in developing special education programs, provide support for authorizers to better assist schools that they charter, and give policy and practice support for those at the state level. The authors trust that the primers will contribute to achieving the goal of including special education as a structural part of all the life stages of a charter school.

INTRODUCTION

The Status of Special Education in Charter Schools¹

Several research studies have examined the issues related to special education in charter schools. Findings from these studies suggest that, for many charter schools, special education is an afterthought, due to a lack of relevant information and the technical assistance necessary to integrate it into the overall design and implementation of the school. Additionally, studies show that there is a lack of information about what special education requirements mean for the school, for students, and their learning. This lack of information and understanding can result in negative outcomes for students with disabilities who attend charter schools, and fiscal and legal liabilities for those schools.

The Set of Technical Assistance Primers

A set of primers for 1) charter school operators; 2) charter school authorizers²; and 3) state-level administrators has been developed to provide background information and resources for the “builders” of charter schools and policymakers to facilitate the successful inclusion of students with disabilities in charter schools. The primers are designed so that the reader can go to any specific section to find questions, answers, and resources that apply to that stage in charter school development. The critical basic issues that should be addressed by the user are presented followed by the stages of development and critical issues to consider. Although there are many complex aspects of developing and managing charter schools, the primers address only those areas most critical to implementing special education successfully in charter schools. Those new to the field, those needing an orientation to these areas and those who have some level of responsibility related to students with disabilities in charter schools are the intended beneficiaries of this primer series.

Introduction to the Authorizer Primer

The purpose of this document is to provide charter school authorizers with targeted technical assistance related to special education in charter schools. Charter school laws are unique to each state, and they provide a wide range of policies and practices for the hundred of authorizers chartering schools nationally. As a result, providing authorizers with technical assistance related to special education is particularly challenging. However, with input from a wide range of stakeholders, we created this primer to provide charter authorizers with the basic information they need to advise charter schools regarding special education. The document also provides insight into the variety of policies and practices that other authorizers are implementing.

This primer opens with a general background on legal issues and responsibility for special education in charter schools and then addresses the various “stages or phases of life” of a charter school, including pre-authorization; authorization; accountability and renewal; and non-renewal, revocation, and relinquishment. It is not intended to be a complete treatment of special education law or authorization practices. In fact, due to the legal foundation upon which special education is built; charter school authorizers are strongly urged to consult an attorney and experienced special education professionals as they develop their policies and practices related to special education in the charter schools they authorize.

- 1 Most states use the term “charter school,” although there are other terms in use for this type of school, such as “community schools” used in Ohio and “public school academies” in Michigan. For consistency, the term “charter school” is used throughout the primers.
- 2 Some states use different terms for the office or organization that accepts applications and approves charters. For consistency, the primers use the term “authorizer” throughout to refer to this function.

BACKGROUND

This section is divided into two parts:

- a discussion of the legal status of charter schools and their linkage to other local education agencies (LEAs), and
- a synopsis of federal laws that are most relevant to special education in charter schools.

The content of this section is intended for those readers who may not fully understand the critical importance of a charter school's legal status within a state's public education system, or may not have a working knowledge of, or need a brief update on, federal special education laws and regulations.

Charter School Legal Status and Linkage to an LEA

Charter schools must abide by federal special education laws and regulations because they are part of the public education system. However, the way this gets carried out in practice differs widely due to many factors, the most important of which are a charter school's *legal identity* and its *linkage* to a traditional LEA **for purposes of special education**.⁴ Familiarity with these concepts is critical to understanding a charter school's level of responsibility for special education.

How is the public education system structured and how do charter schools fit into it?

The elements of the public education system are:

- the state education agency (SEA);
- school districts (known in many states under different terms such as school district, parish, or LEAs⁵; and
- schools that are part of an LEA.

An LEA is usually defined as an entity that has responsibility for the education of all children who reside within a designated geographical area of a state. Charter schools do not completely fit into this definition since they are schools of choice and have responsibility only for students who are enrolled in the school. The Individuals with Disabilities Education Act (IDEA) and its regulations specifically include charter schools and clearly provide that “children with dis-

abilities who attend public charter schools and their parents retain all rights under this part [CFR 34 Sec. 300.209].

The place a charter school occupies in the public education system depends on the charter school's legal identity, usually referred to as a charter school's LEA status. LEA status is assigned by the state charter school law or other state policy that is legally binding. However, status is not always clearly delineated and a charter school's legal status for special education may be different from its legal status for all other matters. Depending on the state in which it is located, an individual charter school may be classified as:

- a separate LEA, or
- part of another LEA.

In addition, some states allow charter schools to have either status based on a choice by the charter school or the authorizer who sponsored the school.

⁴ It is important to note that this set of primers focuses on identity for purposes of special education, although a state may assign different legal identities to a charter school for different purposes.

⁵ For consistency, school districts are referred to as LEAs throughout this primer and the others in the series.

Why is charter school legal identity for special education important?

The exact nature of a charter school’s identity for purposes of special education is important because, under federal requirements, an LEA has many more programmatic and financial responsibilities than a school that is only a part of an LEA. While the state is ultimately responsible for the education of all its resident children, states delegate responsibility to LEAs, e.g., states typically assign the responsibility to their LEAs for providing a free appropriate public education (FAPE). In addition, LEA status determines how funds for special education will flow to the charter school.

How does a charter school’s LEA status impact its operations?

The major effect of a charter school’s LEA status is the type of linkage that is mandated or voluntarily established between that charter school and a traditional LEA. In other words, a charter school’s legal status is reflected in the way it relates to other LEAs.

There are three types of linkage:

- **NO-LINK**—a charter school that is its own LEA has full responsibility for special education and usually has No-Link to another LEA (although a charter could negotiate some working relationship with an LEA if it chooses to do so);
- **TOTAL-LINK**—the charter is considered a part of an LEA and the LEA is responsible for the students with disabilities; and
- **PARTIAL-LINK**—the connection between a charter school and an LEA when there is a required or negotiated connection, e.g., the charter school has responsibility for services, but the child’s home LEA carries out evaluation team tasks, or the charter school is responsible for only those services that can be delivered in the school and the LEA resumes responsibility when the child needs more specialized day or residential placement.

The figure below illustrates the relationship with other LEAs that a charter school can have based on its legal identity.

Relationship Between Legal Identity and Linkage

A CHARTER SCHOOL THAT IS:

An LEA

Partial-Link

No-Link

Part of an LEA

Total-Link

Partial-Link

Indicators of a State’s Linkage

NOTE: The term “LEA” in these items refers to a traditional school district and does not mean a charter school that is its own LEA.

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	Does the LEA retain responsibility for student evaluations for special education eligibility?
<input type="checkbox"/>	<input type="checkbox"/>	Does the LEA maintain or supervise the IEP team to develop, revise and implement a student’s IEP and make placement decisions?
<input type="checkbox"/>	<input type="checkbox"/>	Is the LEA responsible for hiring (or delegating the responsibility for hiring) qualified special education personnel?
<input type="checkbox"/>	<input type="checkbox"/>	Is the LEA responsible for providing (or delegating responsibility for providing) a full continuum of placements?
<input type="checkbox"/>	<input type="checkbox"/>	Do all federal, state and local special education dollars designated for charter schools flow through the LEA?

If in describing your state you answered “yes” to most of these statements, your state is most likely a *total-link* state. Conversely, if you answered “no” to most of these statements, your state is most likely a *no-link* state. A mixture of “yes” and “no” responses indicates that your state is most likely a *partial-link* state.

What are the indicators of linkage?

Since there may be a considerable amount of variability in the way linkage is enacted in a specific charter school, the types of linkage can be said to fall along a continuum. Often, the specifics of how linkage will work is described in a contract between a charter school and an LEA. The box on Indicators of Linkage provides one way to determine the type of linkage a particular charter school has with a traditional LEA.

Why is linkage important?

Linkage is important because it determines the way that responsibilities for special education evaluation and services will be carried out. While the widest degree of variability occurs in *partial-link* situations, assignment of responsibility can also vary in *total-link* and *no-link* states. Usually, state law is not completely clear about all the details of accountability for special education in charter schools, so the specifics have to be negotiated between the charter school and the LEA. Often, some responsibilities are assigned while other operational elements are not. It is critical for a charter school to arrange in advance and commit to writing as clearly as possible an understanding with the LEA(s) to avoid future problems.

Federal Laws Relevant to Special Education in Charter Schools

The following brief overview of federal education laws as they pertain to special education is intended to be an orientation for those who are not very familiar with this legislation. Links are included for locating the full text of these laws and/or their regulations.

Which federal laws are most relevant to special education in charter schools?

For charter schools, the federal laws (and their regulations) that have most relevance for implementing special education are the Individuals with Disabilities Education Act (IDEA); the Elementary and Secondary Education Act (ESEA), recently reauthorized as the No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act of 1973 (504); the Americans with Disabilities Act (ADA) and the Family Education Rights and Privacy Act (FERPA).

Are copies of these laws or regulations available on the Internet?

Yes. The links are as follows:

- **IDEA:** Revisions to the IDEA were enacted in December 2004 as P.L. 108-446. The regulations related to IDEA 2004 were revised in August 2006. Copies of both the law and regulations and other technical assistance related to them are available on the OSEP website at <http://idea.ed.gov/explore/home> and at <http://nichp.org/idea.htm>
- **NCLB:** Links to the law, regulations and policy guidance are available online at www.ed.gov/about/offices/list/osep/legislation.html#leg
- **504:** Regulations can be found online at www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#D
- **ADA:** Regulations and technical assistance are available online at www.usdoj.gov/crt/ada/publicat.htm
- **FERPA:** An explanation is available online at www.ed.gov/policy/gen/guid/fpco/ferpa/index.html and brochures about FERPA for schools and parents are available at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html>

Which federal agency is responsible for overseeing these laws?

In the U. S. Department of Education (ED), the Office of Special Education Programs (OSEP) is in charge of the IDEA, the Office for Civil Rights (OCR) is responsible for Section 504 and the ADA and the Office of Elementary and Secondary Education (OESE) manages the ESEA and NCLB. The Family Compliance Policy Office provides technical assistance for FERPA requirements.

Do students with disabilities have a federally protected right to attend charter schools?

Yes. Section 504 specifically prohibits discrimination solely on the basis of disability to public and private programs and activities that receive federal financial assistance. Children who attend charter schools are covered by these civil rights laws in the same way as children in any other public school.

What is the Individuals with Disabilities Education Act (IDEA)?

The IDEA provides federal financial assistance to state education agencies (SEAs) and local education agencies (LEAs) to guarantee special education and related services to eligible children with disabilities. Every state receives these funds and must follow all of IDEA's specific procedures, including those for an evaluation to determine if students are eligible for special education and the additional requirements for subsequent services and re-evaluation.

Children who are not eligible under IDEA may qualify as students with disabilities under Section 504.

What are the basic requirements of IDEA?

The basic requirements, often discussed using a set of acronyms, are:

- **IEP:** A team of professionals and parents arranges for the child's evaluation, determines eligibility, decides on the individualized special education and related services for the child and prepares an *individualized education program* (IEP) that contains specific content that must be reviewed at least annually. An IEP includes measurable annual goals, how the child will be included in state and district assessments and how the child will access the general education curriculum in order to meet state standards.
- **FAPE:** Students with disabilities are entitled to a *free appropriate public education* (FAPE) provided at no charge to parents.
- **LRE:** The *least restrictive environment* (LRE) refers to placement in a setting that is the closest to the regular classroom. Students with disabilities must have available to them a continuum of placements that range from full time in a regular classroom to full time in a special setting. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the regular classroom.

from the regular classroom.

The OSEP website at <http://idea.ed.gov> provides information concerning specific requirements of the IDEA.

What does the IDEA say about charter schools?

The 2004 amendments to IDEA continued to affirm that students who attend charter schools are covered under this law.

- Children with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Charter schools are included in the definition of an LEA when they are established as LEAs by state law.
- Students with disabilities in charter schools that are **part of an LEA** must be served in the same manner as that LEA serves children with disabilities in its other schools including that the LEA must provide supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools. The LEA must also provide funds under this part to those charter schools on the **same basis** as that LEA provides funds to the its other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the **same time** as the agency distributes other federal funds to the agency's other public schools, consistent with the state's charter school law.
- A charter school that is *its own LEA* is responsible for ensuring that the requirements of IDEA are met unless state law assigns that responsibility to some other entity.
- If a charter school is *a school of an LEA* that receives IDEA funding, the LEA is responsible for ensuring that the requirements are met, unless state law assigns that responsibility to some other entity.

- Charter schools that are LEAs cannot be required to join with other LEAs to establish joint eligibility for funds. (States can require traditional LEAs to join together for funding purposes if they would not be able to establish and maintain programs of sufficient size and scope individually).
- The state special education advisory panel must include a representative of charter schools.
- Special education teachers in charter schools may not have to meet certification requirements in IDEA if their state's charter school law does not require that teachers in charter schools be certified.
- Charter schools that are their own LEAs are specifically included in eligibility to access the resources of an LEA risk pool for high need children with disabilities if the state establishes such a fund.

These specific requirements involve a charter school's *legal status* as an LEA or part of an LEA. See Section I of this Background for a discussion of that concept.

What happens if a parent disagrees with the school about special education?

The IDEA contains procedural safeguards and due process rights for parents in the identification, evaluation and placement of their child. Parents must be provided with prior written notice of these rights at least once a year and at the time they request a due process hearing. The law put various procedures in place for resolving conflicts between parents and schools. Every state must have a formal complaint system and must provide for mediation and due process hearings to settle conflicts.

Are there children with disabilities who may not be covered by IDEA?

Yes. To be eligible under IDEA, children must meet the criteria of one of the specific disability categories as defined in the law. However, children who are not eligible under IDEA may qualify as students with disabilities under Section 504.

How do Section 504 and the ADA differ from IDEA?

Section 504 and the ADA define disability much more broadly than the IDEA. They include any individual who has a physical or mental impairment that substantially limits one or more life activities, or who has a record of such an impairment, or who is regarded as having such an impairment. Reasonable accommodations are required by both of these laws and Section 504 goes further by specifically requiring the provision of educational and related aids and services that are designed to meet the individual educational needs of the child. The exact wording of the definitions in the regulations for IDEA and Section 504 are as follows:

■ IDEA REGULATIONS:

§300.8 Child with a disability.

(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child--

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic

instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

■ SECTION 504 OF THE REHABILITATION ACT OF 1973—REGULATIONS⁶:

34 CFR 104.3

(j) Handicapped person—(1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, and/or genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (ii) *Major life activities* mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

What are some examples of disabilities that may be covered under Section 504 but not by the IDEA?

Children who have chronic illnesses such as diabetes, or a physical impairment, such as those connected with cerebral palsy, may require specific accommodations or services, but do not meet the criteria of the IDEA definitions or additional specifications applied through state law. Such children are entitled to an evaluation and to FAPE if they are found to

meet the definition of “handicapped person” as specified in the law. A 504 plan is usually written in these cases. Further details are available in the document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* available online at www.ed.gov/about/offices/list/ocr/504faq.html?exp=0

Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.

Are funds available under Section 504?

No, there are no funds available as part of Section 504 and IDEA funds may not be used to serve children who are eligible only under Section 504.

What requirements about accessibility of facilities do charter schools have to follow?

The state and federal requirements for accessibility of facilities are complex. It is important that authorizers and operators of charter schools have appropriate legal and technical assistance on this topic. Federal regulations can be found online at www.usdoj.gov/crt/ada/adastd94.pdf

What parts of NCLB are particularly relevant to students with disabilities?

There are many parts of NCLB that pertain to students with disabilities in charter schools, but the most relevant ones are the accountability requirements related to assessment and highly qualified teachers.

What NCLB assessment requirements pertain to students with disabilities?

Charter schools are subject to the same Title I accountability requirements as other public schools in a state and all state charter laws currently require charter schools to participate in their state's assessment system for public schools. Policy guidance for NCLB says a state's assessment system must be designed to be valid and accessible for use by the widest pos-

⁶ Note: Section 504 was originally adopted in 1973 when the term ‘handicapped’ was in common use. That term has been replaced in general usage with what is known as ‘people-first language’ such as ‘child with a disability’ such as now used in the current version of the IDEA.

sible range of students, including students with disabilities and students covered under Section 504. The participation of students with disabilities in such assessments is covered in the IDEA and requires the following:

- Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.
- Alternate assessments must be provided for those children who cannot participate in state and district-wide assessment programs even with accommodations.
- The IEP for all students with disabilities will specify how they will participate in state assessments.

It is important to note that procedures for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. Extensive resources on this topic are available at the website of the National Center on Educational Outcomes at www.education.umn.edu/nceo/

Are students with disabilities included in their state's adequate yearly progress (AYP) requirements?

Yes. As stated in NCLB, AYP applies the same high standards of academic achievement to all public elementary and secondary school students in the state. The law also requires selected subgroups, one of which is students with disabilities, to be considered separately under certain conditions in determining whether a school has met AYP targets. An important part of the NCLB regulations, known as “the one percent rule” that applies to students with the most significant disabilities, was added to the NCLB regulations in December 2003. The Department of Education has issued a summary of that rule that is available at www.usu.edu/mprrc/workgroups/ci/011404Material1.pdf. In addition, another regulation known as the “two percent rule” was added to NCLB in 2007 – see <http://www.ed.gov/policy/speced/guid/modachieve-summary.html>.

How must students with disabilities be included in NCLB accountability reports?

Students with disabilities is one of the subgroups for which NCLB requires disaggregated reports of assessment results. However, NCLB provides that a state may not use disaggregated data for one or more subgroups to report achieve-

ment results if the number of students in those subgroups is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student.

The law also requires selected subgroups, one of which is students with disabilities, to be considered separately under certain conditions in determining whether a school has met AYP targets.

Which NCLB teacher qualification requirements pertain to students with disabilities?

It is important to note that the NCLB law does not specifically refer to the teachers who provide special education services—that issue is covered in IDEA. State laws and policies that cover certification for charter schools must be carefully reviewed by everyone involved with charter schools. As mentioned above, the 2004 amendments to IDEA make specific reference to special education teacher certification requirements. The IDEA special education teacher qualification requirements are complex and are quoted in full as from the IDEA Regulations as follows:

§300.18 Highly qualified special education teachers.

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general. (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that--

(i) The teacher has obtained full State certification as a

special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which--

(i) The teacher--

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate academic achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate academic achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

(1) Meet the applicable requirements of section 9101 of

the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those alternate academic achievement standards, as determined by the State.

(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meet all the requirements for a HOUSSE for regular education teachers--

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special education teacher. (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of §300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.

(Authority: 20 U.S.C. 1401(10))

SECTION 1: PRE-AUTHORIZATION/PLANNING

What is the pre-authorization phase?

The pre-authorization phase encompasses the planning activities preceding the submission of a charter application to an authorizer. This stage generally starts out very informally and grows increasingly structured as potential charter school applicants work to turn their vision of a school into a concrete plan that can be implemented. This stage is frequently abbreviated or rushed due to application deadlines. Nevertheless, it is a critical stage in the creation of a charter school. This is the stage when authorizers have a unique opportunity to urge developers to incorporate special education into their overall planning rather than add it later to existing policies and procedures.

What is an authorizer's role during pre-authorization related to special education in charter schools?

Authorizers' roles and responsibilities related to special education are highly dependent upon individual state charter school laws and authorizer practices and procedures. Authorizers may encounter charter applicants with limited knowledge of their responsibilities related to students with disabilities. Ideally, authorizers should ensure that charter school applicants are knowledgeable about federal and state laws related to educating students with disabilities and cognizant of their responsibilities related to special education. Authorizers that do not or cannot provide deeper technical assistance regarding special education themselves should refer applicants to qualified technical assistance providers who can give them the developmental guidance applicants need throughout the planning phase. At a minimum, application materials should inform the applicants that special education is a consideration in evaluating applications. As articulated in the introduction, charter schools' legal identity and contractual relationship to a local education agency define their special education responsibilities. Authorizers should require that charter applicants demonstrate that they understand those responsibilities and can amass the capacity to meet them.

How can I introduce potential charter school applicants to the rationale behind special education laws?

Introducing charter developers to the reasons underlying special education may help lower barriers to implementing special education programs. In other words, authorizers should consider teaching potential operators why special education exists. Furthermore, it may be helpful to acknowledge that, while special education policies and procedures can admittedly be cumbersome, they have evolved over many years and they stem from documented exclusion of children with disabilities. Charter developers may require that charter applicants attend a brief introduction to the civil rights origins of the Individuals with Disabilities Education Act (IDEA). Examples of resources that an authorizer could make available to charter applicants are publications from the Future of Children available at www.futureofchildren.org/information/2826/information_show.htm?doc_id=72450.

What does an authorizer need to know about basic IDEA concepts?

It is important that an authorizer have a clear understanding of some basic special education concepts that are incorporated into the federal laws. A "free appropriate public education" (FAPE) refers to special education and, if required, related services designed to meet the individual needs of students with disabilities based on an individualized education program (IEP). The "least restrictive environment" (LRE) is a requirement articulated in IDEA that stipulates that children with disabilities be educated in the general education classroom to the maximum extent appropriate and in the setting that they would be in if they did not have a disability unless the child's written plan or IEP requires otherwise. Where possible, students with disabilities are to be provided with supplemental aids and services to facilitate participation in general education.

Can an authorizer grant charter school applicants waivers from federal special education requirements as part of their charter?

The federal government has not permitted any waivers from federal special education requirements for charter schools. Charter schools are public schools and must be open to, and serve the needs of, any student with a disability wishing to attend. However, state charter school laws can grant charter

Charter schools are public schools and must be open to, and serve the needs of, any student with a disability wishing to attend.

schools waivers from state and local requirements related to special education as part of their charter. Given that one of the tenets of the charter school movement is the goal of fostering innovation, authorizers should strive to provide charter school developers with the opportunity to develop special education programs in non-traditional ways as long as they operate within the parameters articulated in federal law. If in doubt regarding what state charter school laws waive, authorizers should contact their state department of special education to differentiate what is required at the federal, state and local level.

What are my responsibilities as an authorizer related to the No Child Left Behind Act (NCLB)?

Authorizers' responsibilities related to NCLB are determined by state charter school law. To be specific, the non-regulatory guidance provided by the U.S. Department of Education states that:

"...a State's charter school law determines the entity within the State that bears responsibility for ensuring that charter schools comply with the Title I, Part A accountability provisions, including AYP. The charter authorizer is responsible for holding charter schools accountable for Title I, Part A provisions unless State law specifically gives the SEA direct responsibility for charter school accountability" (2003, p. 5) www.ed.gov/policy/elsec/guid/charterguidance03.pdf

For general information about NCLB, see the U.S. Department of Education website at: www.ed.gov/nclb/landing.jhtml

What issues should I encourage charter applicants to consider during the planning phase to ensure that they will be able to provide special education appropriately?

When working with charter applicants, authorizers are wise to advise applicants of the value of the old adage, "an ounce of prevention is worth a pound of cure." When applied to developing a school that can educate students with disabilities, the "ounce of prevention" requires adequate planning during the charter development and start-up phase. The specific issues that charter operators should consider during the pre-authorization phase will vary by state and even by individual authorizers within a state. However, the following is a list of issues authorizers should encourage applicants to consider related to special education. The list is not exhaustive, but rather a guide to key issues that potential charter applicants should take into account. The answers to these questions will depend upon: 1) legal status of the charter school; 2) the charter negotiated between the authorizer and the operator; and 3) the characteristics of the individual charter school.

By educating applicants earlier rather than later, authorizers can encourage applicants to build special education into their vision of a school rather than simply add special education after the school model is developed.

Are there any existing models of how to address special education during the planning phase?

A number of organizations (e.g., state education agencies (SEAs), local education agencies (LEAs), other authorizers, charter school support organizations) have developed documents and orientation series that include information regarding special education in charter schools. The following documents are examples of technical assistance materials

Issues for Charter Applicants to Consider During the Planning Phase

HUMAN RESOURCES

- How many students with disabilities should we estimate that our school will enroll?

If we will be responsible for providing special education:

- How many special education teachers will we need to employ?
- What kind of certification will the special education teachers need?
- How does our state define “highly qualified” teachers according to NCLB and “qualified personnel” under IDEA?
- Can our school hire dual-certified teachers?
- Can we hire part-time or retired special education teachers?
- Will we need to hire staff for health-related issues?
- What are the implications for salaries and benefits if we hire full- versus part-time employees?

If an LEA will be responsible for all, or part of, special education in our school:

- Will the school be required to contract with an LEA for the purposes of special education?
- If our school needs to work with an LEA, how do we negotiate with the LEA to ensure our students will receive appropriate services?

CURRICULUM AND ASSESSMENT

- What curricula and instruction will our school offer?
- How will we modify the curriculum and instructional delivery to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum and instructional approach for children with disabilities in inclusive classrooms?
- How will our school include children with disabilities in required assessments or develop alternate assessment?
- How will curriculum and assessment decisions be considered and monitored by IEP teams and staff?

PROFESSIONAL DEVELOPMENT

- How will our school provide teachers with professional development?
- Will teachers need any specialized professional development related to educating and including children with disabilities?
- Does the district or the state operate a professional development program or network that we can utilize?

ADMINISTRATION

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- Can we create our own system to administer special education or will we adopt the policies/procedures dictated by our authorizer, local district, or other administrative unit?
- How will our school handle student records and other school property appropriately in the event of closure of the charter school?

SPECIAL EDUCATION FUNDING

- How will federal, state and local special education dollars flow?
- What does our school need to budget for special education during the first year of operation?
- Do we need to prepare financially to enroll a student with significant special needs?

FACILITIES

If we will be responsible for special education evaluations and services:

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide pullout services?
- Where can related services personnel meet with individual students?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals—including adults—with physical disabilities?
- Does the facility have space for a nurse to store and administer medications or use medical equipment?

TRANSPORTATION

If we are responsible for special education services:

- How will our school meet transportation needs of students who receive transportation as a related service articulated on their IEP?
- Where will we access transportation for a student in a wheelchair?

related to special education for charter school developers. These documents might be informative to authorizers interested in developing similar materials:

- *Arizona Department of Education: Hot Topics in Special Education* www.ade.state.az.us/charterschools/info/spedhottopics.asp
- *Colorado Department of Education, Charter Schools Guidebook* www.cde.state.co.us/index_charter.htm

Summary and Key Points

The pre-authorization phase provides charter school authorizers the critical opportunity to inform potential applicants about their responsibilities related to special education. While many state charter school laws and subsequent charter applications require applicants only to provide a general assurance that they will not discriminate or more specifically, an assurance to abide by IDEA, many applicants are not aware of what these assurances entail. However, once charter schools are authorized and have evolved to the operating phase, the pressures associated with start-up and day-to-day operations frequently limit operators' ability and available options to create an effective and efficient special education program.

In an effort to pre-empt potential problems associated with not complying with IDEA requirements, charter authorizers can take advantage of applicants' planning phase to educate applicants about special education. By educating applicants earlier rather than later, authorizers can encourage applicants to build special education into their vision of a school rather than simply add special education after the school model is developed.

SECTION 2: AUTHORIZATION

What occurs during the authorization phase?

The authorization phase incorporates the stage in which the applicant completes the formal written application and seeks a charter. The application process typically conforms to broad requirements in state charter school laws and is further developed by individual authorizers. Charter school applicants are generally required to articulate in one form or another, the school's mission, governance structure, educational model, budget and assessment and accountability plan. In some states, if accepted, the application becomes the charter or contract for which schools are held accountable. In other states, once a charter is granted, the authorizer and the charter school negotiate a contract that articulates in greater detail the basis on which the authorizer will hold the charter school accountable for performance. The contract may outline how finances—including special education finances—will be managed.

When reviewing charter applications, in what areas should I anticipate or require information regarding an applicant's plan to incorporate students with disabilities?

- Administration
- Curriculum, instruction and assessment
- Enrollment
- Specialized personnel (e.g., certified special education teachers, administrators, related services personnel)
- Budget
- Facility
- Transportation

What should authorizers ask applicants about their plans to provide special education services to students with disabilities?

Authorizers should ask applicants at a minimum to articulate a rudimentary plan regarding governance, service delivery and financing of special education. It is critical that applicants demonstrate to authorizers that they have a well

conceived, feasible plan to access the capacity they will need to meet their legal responsibilities. In addition, in accordance with the specific level of responsibility the charter school will have—according to its legal status as an LEA or part of an LEA—authorizers should ask applicants to provide some or all of the following plans during the application and authorization phase:

- plan to evaluate and identify children with disabilities;
- plan to develop, review and revise IEPs;
- plan to integrate special education into the general education program;
- plan to deliver special education and related services (e.g., in-house or contract out?);
- projected cost of special education program (e.g., percent of operating budget);
- plan to access and account for special education funds;
- anticipated sources for ongoing legal guidance related to special education;
- plan to ensure that the school facility meets the requirements of other related laws such as the Americans with Disabilities Act (ADA) and Section 504;
- plan for enrollment/IEP transition procedure;
- plan for IEP development and review meetings;
- plan to address student discipline;
- plan to handle programming disputes involving parents;
- plan to ensure confidentiality of special education records;
- plan to purchase services from special education vendors; and
- plan to secure technical assistance and training.

The textbox contains a sample of how a charter applicant might articulate its plan to provide special education.

Sample Statement (from Colorado) of a Charter School's Plan to Provide Special Education

“Special Education and Section 504 Compliance Plan”

I. COMPLIANCE WITH FEDERAL AND STATE SPECIAL EDUCATION AND DISABILITY LAWS

ACME Charter School (ACME) acknowledges and understands that it is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, including the Individuals with Disabilities Education Act (IDEA), the Colorado Exceptional Children's Education Act (ECEA), Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). ACME will be accountable to the board of education of the Lost Lake School District (District) for purposes of assuring compliance with federal and state special education and disability laws.

II. RESPONSIBILITY FOR SPECIAL EDUCATION SERVICES

ACME acknowledges and understands that the District's special education director is responsible for assuring that special education students attending ACME receive a free appropriate public education (FAPE) under the IDEA and ECEA.

ACME will use the combination model (a combination of the insurance and contract models) for special education service delivery. Specifically, ACME will be responsible for providing special education instruction according to the individualized education programs (IEPs) for each student with a disability enrolled at ACME. ACME will deliver special education instruction primarily within the regular classroom, and will provide resource room “pull-out” services as required by student IEPs. Within this framework, ACME will provide all necessary accommodations and instructional/curricular modifications as required by student IEPs.

The District will provide all related services required by the IEPs including, but not limited to, initial evaluations and re-evaluations, occupational therapy, physical therapy, paraprofessional services, school psychology service, school health care services and transportation services required by student IEPs. ACME and the District will jointly select the related services providers who will be assigned to ACME.

Colorado Charter Schools Best Practices Guidebook: Sample Special Education and Section 504 Compliance Plan for Charter and Renewal Applications. Available online at www.cde.state.co.us/cdechart/download/SpedCompliancePlan.pdf

What is my responsibility as an authorizer to ensure that charter schools serve children with disabilities?

The full extent of authorizers' responsibilities related to special education has yet to be established. At a minimum, authorizers have a moral responsibility to provide charter schools with information regarding their obligation to serve all children, including children with disabilities. As will be discussed later under oversight responsibilities, authorizers also have responsibility to ensure that charter schools serve all students who enroll and to meet other special education requirements, although ultimately, it is the state's responsibility to ensure compliance with IDEA.

As an authorizer, am I, or is my agency, liable if charter schools I authorize do not serve children with disabilities or otherwise do not implement special education properly?

To date, there is no case law establishing whether, or the degree to which, authorizers can be held responsible for special education in the schools they authorize, nor is there judicial precedent that explicitly releases authorizers from responsibility related to special education. This does not mean that authorizers cannot or will not be held responsible at some point in the future. Consequently, authorizers should seek legal counsel regarding local and state special education regulations and the degree to which charter schools or parents may

hold the authorizers accountable for the implementation of special education in the charter schools that they authorize.

What are some issues authorizers should monitor related to discrimination against students with disabilities?

As public schools, charter schools are not allowed to discriminate against students with disabilities. An issue that arises in both charter schools and traditional public schools is “counseling-out” of students with disabilities. Counseling-out is the process of subtly or not-so-subtly “counseling” a child with a disability to influence an enrollment decision inappropriately based on the child’s disability.

Can a charter school “counsel-out” a student with a disability?

Charter schools are public schools and as such, they are legally required to maintain open enrollment policies. Advising students with disabilities that they are not allowed to attend, or that the school cannot provide the modifications or accommodations necessary to enable them to attend, is discriminatory and illegal. All placement decisions for students with disabilities should be made in the forum of an IEP meeting and must be based on an individual student’s educational requirements. The federal Office for Civil Rights (OCR) is charged with investigating issues raised about discrimination against students with disabilities.

If, in the process of making placement decisions, charter schools “counsel” students regarding placement, is this counseling-out?

Determining whether a particular educational environment is the best placement is not discrimination if conducted in an appropriate manner (i.e., by an IEP team) and based on an individual child’s needs. It is part of the process of ensuring that a child with a disability receives a free appropriate public education in the least restrictive environment. Given the unique nature of some charter schools’ programs, not all charter schools are going to be appropriate for all children with disabilities (i.e., children with an official IEP or 504 plan) while meeting the goals and objectives outlined in their charter. However, there is a fine line between discrimination and determining that a particular program may not be an appropriate setting for a child with a particular disability. To ensure

that decisions regarding enrollment are 1) made based upon each individual child—as opposed to groups of children with particular disabilities—and 2) made based upon the best interests of the child as opposed to the convenience of the charter school, decisions regarding appropriate placement must be made by an IEP team rather than a single individual.

To what degree are charter schools required to modify their programs to accommodate a student with a disability?

The degree to which a charter school may be required to modify its program according to the educational requirements of student with a disability depends upon whether the charter school is an LEA or part of an LEA. In general, charter schools that are their own LEAs are solely responsible for providing FAPE and LRE to all students who are enrolled. Charter schools that are part of an LEA will share this responsibility across a number of schools, including schools that may offer specialized programs for students with certain types of disabilities. In some states (e.g., MA and NJ), the charter school law returns some of the legal responsibility to the district even though the charter schools are LEAs.

For a more detailed explanation regarding access to charter schools for students with disabilities, see the OCR document *Applying Federal Civil Rights Laws to Charter Schools*, at www.uscharterschools.org/pdf/fr/civil_rights.pdf

What are examples of appropriate classroom adaptations, accommodations and modifications offered to children with disabilities?

Examples of appropriate classroom adaptations, accommodations and modifications that enable a child to access the curriculum include:

- changing the manner in which material is presented;
- creating personalized study guides;
- adapting textbooks;
- arranging the classroom environment to enhance student learning;
- altering task requirements;
- selecting an alternate task for a classroom assignment;
- managing classroom behavior;
- promoting social acceptance; and
- using assistive technology devices.

Charter schools shall comply with the provisions of Chapters 71A and 71B [MA special education law]; provided, however, that the fiscal responsibility of any special needs student currently enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides (The Education Reform Act of 1993, Massachusetts Department of Education, Section 55, P. 76 Charter Schools).

A charter school shall comply with the provisions of Chapter 46 of Title 18A of the New Jersey Statutes concerning the provision of services to handicapped students; except that the fiscal responsibility for any student currently enrolled in or determined to require a private day or residential school shall remain with the district of residence (Charter School Program Act of 1995, N.J.S.A. 18A:36A).

More information on classroom adaptations, accommodations and modifications is available from the National Information Center for Children and Youth with Disabilities online at www.nichcy.org/pubs/bibliog/bib15txt.htm

What is my role in ensuring that charter schools fulfill their mission while complying with their obligation related to adaptation, accommodations and modifications required by IDEA?

Authorizers should require applicants to articulate their mission explicitly and ensure that the charter school is prepared to offer reasonable accommodations to children with disabilities who elect to attend the school. A key component of reasonable accommodations is a school culture that incorporates a commitment to offering accommodations to individuals with disabilities while guarding against substantively changing the nature of the school's mission. Authorizers should scrutinize charter schools' admission policies to ensure that the policies don't block enrollment for particular students or groups of students.

Can a charter school's curriculum alone meet the needs of students with disabilities?

The core tenet of the IDEA is that children are treated as individuals with unique abilities and disabilities that need to be addressed by providing unique support services, which are explicitly articulated in an IEP. Even if the school plans to provide all children with individualized learning plans loosely analogous to IEPs that address each student's unique cognitive and physical abilities and disabilities, the learning plan for a student with a diagnosed disability must conform to all of the requirements of IDEA. To determine whether these learning plans or other curricula approaches meet IDEA procedural requirements, charter operators must be aware of district and state special education requirements. In general, any policy that aims to treat all children with disabilities the same way should raise a red flag to authorizers assessing applications. When reviewing charter applications, authorizers can request additional information regarding how the charter school plans to ensure that its particular curriculum or instructional approach can address the unique individual needs of students with disabilities.

What does it mean to have the capacity to provide special education services?

Special education capacity entails having the human, fiscal and legal resources required to fulfill the responsibilities articulated in IDEA. At a minimum, capacity includes the ability to implement existing IEPs, refer eligible students to special education, conduct evaluations, develop IEPs and provide special education and related services for all entitled students enrolled in the school. Authorizers need to be confident that applicants either have established, or can access, the capacity they will need to meet their special education responsibilities. This could involve securing services from an outside source.

Why is it important for authorizers to ensure that charter applicants have the capacity to provide special education services?

By ensuring that charter schools have the capacity to provide special education services, authorizers can help operators avoid potential liability and ensure that all students who enroll have the opportunity to obtain an appropriate education.

When does a charter school need to have the capacity to provide special education services and comply with federal and state laws?

Charter schools need to have the capacity to meet their legal responsibility for special education and comply with federal and state laws on the first day they open and thereafter for as long as they operate.

The core tenet of the IDEA is that children are treated as individuals with unique abilities and disabilities that need to be addressed by providing unique support services, which are explicitly articulated in an IEP.

How are charter schools developing the capacity to deliver special education services in the school?

Building special education capacity may entail various arrangements depending upon whether a charter school is part of a local district or its own LEA and the degree to which it is linked to a local education agency for the purposes of special education. Examples of approaches charter schools are using to increase their special education capacity include: 1) hiring appropriate professionals to work at the charter school; 2) contracting with a local education agency; 3) contracting with a regional education agency or cooperative; 4) contracting with individuals or organizations qualified to provide special education services; or 5) some combinations of these approaches. As long as charter schools can ensure that children with disabilities enrolled in their schools have access to a free appropriate public education, they may utilize a variety of strategies to amass the capacity.

Do charter schools have to hire licensed special educators?

Changes to IDEA in 2004 require that special education teachers meet the “highly qualified” standards of NCLB. It is also essential that charter school operators who hire or contract for personnel understand the requirements their

state has established about certification. (See 34 CFR Sec. 300.18 for IDEA Regulations on Highly Qualified Special Education Teachers.)

Given the current shortage of special education teachers nationwide, what strategies can charter schools use to hire teachers and related services professionals?

Charter schools can employ creative strategies to access credentialed special education and related services professionals. Six strategies that charter schools commonly use are:

- hiring faculty with dual licensure (e.g., elementary education and special education);
- hiring consultants to provide special education services;
- hiring retired teachers to work part-time;
- developing collaborative agreements with an LEA;
- developing collaborative agreements with other charter schools to share special education teachers; and
- forming partnerships with a local non-profit entity (e.g., a hospital) or a post-secondary institution that employs related professionals.

Where can charter schools learn more about their state’s requirements regarding special education certification?

Most states maintain detailed websites that include teacher certification requirements, including routes for alternative certification and scholarship/incentive programs developed to encourage people to become teachers. Because special education is one of the areas in which there is currently a shortage of teachers, many states sponsor programs designed to encourage individuals to obtain special education credentials. Authorizers may want to make charter applicants familiar with the various teacher recruitment and induction programs offered in their state. These programs may be rich sources of qualified teachers, including special education personnel, for charter schools.

What are the major expenses associated with special education?

Expenses associated with special education fall into four general categories: personnel, equipment, facility modifications and transportation. The amount a charter school will need to allocate to these categories and the degree to which

these expenses may be shared with another entity depends upon the charter school's legal status and linkage to a local education agency.

How can charter schools in total-link states plan for their expenses related to special education?

Total-link charter schools should work closely with district personnel to determine how services to students with disabilities who attend the charter school will be financed and delivered. For example, will the charter school receive federal, state and local special education dollars directly? Will the district receive the funds and provide special education services using district staff to students with disabilities enrolled in the charter school?

Legal requirements regarding accessibility are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act.

How can charter schools in partial-link states plan for their expenses related to special education?

Partial-link charter schools should consult with district personnel to determine how special education dollars for students with disabilities who attend the charter school will flow and negotiate roles and responsibilities related to special education service delivery.

How can charter schools in no-link states plan for their expenses related to special education?

Nationally, approximately 13 percent of the public school population is identified as eligible for special education services. As a general rule of thumb, charter schools should anticipate that approximately 13 percent of their student population will be students with disabilities and budget accordingly.

How do charter schools pay for the costs associated with providing special education services?

There are federal, state and local resources to pay for special

education. However, historically these resources are less than what districts spend to fulfill the requirements of IDEA. Authorizers should ensure that applicants know how to access all the federal, state and local resources that are available to their children with disabilities. Charter schools developers should be advised to consider developing a reserve in case their special education expenses exceed revenue.

What is excess cost as it relates to special education?

Excess costs are the costs a school or district incurs as a result of providing special education services but which are not covered by state or federal special education funding sources.

How can authorizers assist charter schools that enroll a child with significant disabilities and are struggling to provide the services the student requires due to the excess costs?

Authorizers should ensure that charter operators understand how to seek additional resources that are available for students with disabilities. The manner in which the charter school may seek additional support to pay for the required services will depend upon the school's legal status within the state and the contractual relationship (linkage) with a local education agency.

- In *total-link states*, charter schools generally receive all of their special education services from their local education agency (or in some states, an intermediate education unit) and consequently, the LEA retains responsibility for paying for any and all costs associated with special education, including costs associated with a child with significant disabilities.
- In *partial-link states*, charter schools address excess costs in a variety of ways depending upon the negotiated contract with their authorizer. Some partial-link schools pay into a risk-pool in anticipation of enrolling a child with significant disabilities. By contributing to the risk-pool, the charter school is essentially purchasing a safety net from the district. When the time comes that the charter school needs to provide significant services for a particular child, it can access the resources of the larger pool of funds. Some partial-link charter schools bill back excess costs to their LEA. In addition, some state laws (e.g., Massachusetts and New Jersey) include provisions whereby, if a child is

categorized as needing a certain level of services, the cost of the services reverts back to the district. However, this type of clause is the exception rather than the rule.

- In *no-link states* where charter schools are legally autonomous LEAs for purposes of special education, the charter school is solely responsible for providing services to the students enrolled in the school, regardless of the costs associated with the services. No-link charter schools generally utilize one of three strategies to pay for expensive services: 1) amass a pool of surplus money in anticipation of enrolling a child with a significant disability; 2) create a cooperative to realize some special education economies or scale; or 3) appeal to the state department of education for assistance with excess costs.

Note: Revisions to IDEA passed in 2004 permit states to establish risk pools to assist LEAs in addressing the needs of “high need children with disabilities.” The law specifically includes charter schools that are LEAs as eligible to participate. Authorizers should know if such a resource exists in their state and advise schools they authorize about their eligibility for such funds.

Do authorizers have any responsibility related to excess costs for students with disabilities enrolled in charter schools?

Authorizer responsibility for excess costs depends upon the authorizer’s legal status (i.e., LEA, SEA, appointed board, etc.) and the legal identity of the charter school. Authorizers should investigate whether the state has a special education safety net or reserve fund and advise applicants about how to pursue possible reimbursement for excess costs. In addition, authorizers should encourage the charter schools they authorize to become familiar with their legal identity and linkage to an LEA so they fully understand their obligations related to excess costs.

What is the legal basis for requirements related to public school facilities’ accessibility to students with disabilities?

Legal requirements regarding accessibility are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act. To read these laws and see documents regarding their implementation in public schools please see the following websites:

- Americans with Disabilities Act of 1990 www.usdoj.gov/crt/ada/adahom1.htm

- Section 504 of the Rehabilitation Act of 1973 www.504idea.org/Select504.pdf
- ADA and Section 504, Kids source www.kidsource.com/kidsource/content3/ada.idea.html

What should authorizers advise charter schools about accessible facilities?

Negotiating the parameters of the ADA and 504 is challenging and authorizers should strongly encourage the schools they authorize to seek legal counsel regarding their obligations associated with accessibility. Authorizers also should obtain counsel, to be familiar with the requirements themselves.

If a charter school is required to make its facility accessible to an individual with a disability, whose responsibility is it to make the building accessible?

Responsibility to modify a facility—even in the event of unforeseen needs—should be articulated in the lease between the charter school and the owner of the facility. Authorizers should strongly encourage charter operators to seek experienced legal counsel prior to signing any contracts to lease or purchase a facility for their school.

What responsibility do charter school authorizers have for monitoring accessibility of charter school facilities?

State or municipal codes generally dictate who is responsible for ensuring that public facilities are accessible to individuals with disabilities. However, given that charter authorizers are ultimately responsible for ensuring that charter school operators fulfill their obligations outlined in their charter and comply with all applicable laws, authorizers would be well advised to take a proactive role in ensuring that facilities are accessible to individuals with disabilities in accordance with federal and state laws.

In the event that a charter school must make its facilities accessible to an individual with a disability, where should an authorizer direct its operator to obtain information about how to make facilities accessible?

- **MUNICIPAL WEBSITES:** most cities and counties post their municipal code, including regulations pertaining to

implementing ADA, on their website. Authorizers should familiarize themselves with county building and municipal codes.

■ **US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS:** www.ed.gov/about/offices/list/ocr/index.html?src=mr

■ **AMERICANS WITH DISABILITIES ACT:** www.usdoj.gov/crt/ada/adahom1.htm

Do charter schools have to provide transportation to students with disabilities?

Although state charter school laws generally articulate charter schools' responsibility related to transporting students to and from school, transporting children with disabilities is a separate issue because transportation can be a related service provided as a component of a child's IEP. If transportation is identified as a related service, the responsibility for transporting the child to the charter school is assigned on the basis of the charter school's legal status and linkage to an LEA. If the charter school is its own LEA, it will have to budget for special education transportation. If the charter school is part of an LEA, then the responsibility for paying for special education transportation is decided as part of the contract between the charter school and the LEA.

Summary and Key Points

The authorization stage is critical to the development of successful charter schools. Building on the foundation established during the pre-authorization phase, the authorization process provides authorizers the opportunity to verify potential operators' knowledge about their responsibilities and to assess the degree to which an applicant is capable of fulfilling these responsibilities. Charter authorizers should be knowledgeable about special education even if this is not required by statute. This basic knowledge will enable authorizers to ensure that: 1) charter applicants fully understand and are prepared for their responsibility to educate students with disabilities and 2) charter applicants integrate their plan to provide adequately for special education within their application. By providing charter developers early guidance on how to anticipate and adequately address the application process, authorizers can help charter schools preempt a variety of challenging issues that will emerge once a child with a disability enrolls in the charter school.

SECTION 3: OVERSIGHT, ACCOUNTABILITY AND RENEWAL

What is my role as an authorizer to hold charter schools accountable in the area of special education?

Once the charter school doors open and the students arrive, charter authorizers' responsibility shifts from granting charters to overseeing the schools and holding them accountable for the goals and objectives outlined in the charters. The charter is a performance contract and the authorizer is responsible for ensuring that charter operators fulfill their responsibilities articulated in the contract. It is important that each charter school's specific level of responsibility for special education be included in the charter school accountability plan.

Do authorizing agencies have any obligation to complete paperwork related to special education in the charter schools they authorize?

Charter authorizers' responsibilities associated with a variety of special education related paperwork depend on who the authorizer is in the larger state public education structure (e.g., a state board of education, a local education agency, an appointed board, or other entity). If a charter school is part of an LEA, the charter school and the district may share responsibility for special education paperwork. However, in many cases, charter schools are solely responsible for completing and submitting their own paperwork. Authorizers unsure about their specific responsibilities should contact their state for guidance.

Where or when is my role related to accountability formally articulated to the charter schools I authorize?

Often, charter approval includes the submission of an accountability plan developed by the charter school that contains specific means by which the authorizer will assess the degree to which the charter school is fulfilling its goals. The plan often includes a site visit when the school first opens; quarterly or annual submission of reports pertaining to enrollment, achievement and finance; annual site visits;

and, eventually, a comprehensive site visit associated with the charter renewal process.

Since data collection and documentation are important aspects of IDEA, what types of data and documentation regarding children with disabilities should authorizers recommend that charter schools collect and report?

Charter schools' responsibility to collect and report data regarding special education is dictated by the charter school's legal status and its linkage to an LEA. Data and documentation are two major accountability tasks. While state charter laws may release charter schools from some state reporting requirements, these schools are generally obligated to collect and report much of the same information that all public schools must report, such as statistical data on students, results of standardized tests and financial information. Examples of special education data and documentation that a charter school must compile include student counts as well as more procedural documents that would be reviewed as part of special education monitoring.

What should authorizers know about the federal and state special education monitoring processes?

An authorizer that is an SEA or an LEA is most likely familiar with the federal and state special education monitoring process. The federal Office of Special Education Programs (OSEP) monitors every state on its compliance with IDEA requirements. In turn, each state must monitor how its districts comply. Charter schools are held accountable for special education in the same manner as all public schools: they must demonstrate that they comply with IDEA.

Each state designs the way it will monitor LEA compliance. For example, a common process used by state departments of education involves sending a team to review LEA procedures in order to ensure that LEAs comply with the requirements of special education law. Each LEA is reviewed on a regular

cycle and a report documenting the findings is issued after the review. The monitored entity must correct any identified compliance violations.

Authorizers should ensure that charter schools understand the level at which they will be involved in special education monitoring and their responsibilities for the process.

The manner in which charter schools are monitored for special education depends upon their legal identity and linkage to an LEA.

Does a charter school's legal identity or linkage to an LEA affect how the school is monitored for special education?

Yes, the manner in which charter schools are monitored for special education depends upon their legal identity and linkage to an LEA.

- Charter schools that are part of an LEA are monitored when their LEA is monitored. Monitoring visits do not include all schools within an LEA every time, but rather a sample of schools. As a result, charter schools may or may not be visited as a part of the state monitoring of the district. However, the district will be held accountable for the policies and processes implemented at the charter school as demonstrated by the data the district maintains. Therefore, LEA authorizers in total-link states must be prepared for the responsibility of collecting data on the implementation of special education in charter schools they oversee.
- Charter schools that are their own LEA for special education will be monitored by the state in much the same manner any other LEA is monitored. In general, states monitor LEAs on a three- to five-year cycle. Some states have developed special monitoring cycles for charter schools to ensure that schools are not monitored in their first year of operation.

Should authorizing agencies consider special education part of the charter renewal process?

On the whole, charter laws do not specifically require authorizers to consider special education in the renewal process. Rather, the laws require that authorizers assess the degree to which the charter school is meeting its goals and objectives and its compliance with federal and state laws. Special education and specifically the performance of students with disabilities should be considered explicitly as a regular part of the school's progress toward meeting its overall goals and not an afterthought. Failure to fulfill obligations related to special education could be a criterion contributing to non-renewal.

A key factor that authorizers may want to assess when contemplating renewal is whether charter schools have been the subject of any informal or formal complaints related to special education service delivery or procedures. While complaints can arise from a variety of issues separate from the quality of special education services provided, multiple complaints should raise a red flag at renewal time. Multiple or persistent complaints may be an indication of a substantive failure to provide a free appropriate public education to students with disabilities. Low enrollment of students with disabilities in a charter school may serve as a "yellow flag" that triggers further inquiry regarding enrollment practices and questions regarding "counseling-out."

Summary and Key Points

Accountability is a core tenet of the charter school concept and one of the critical responsibilities of all charter school authorizers. State charter school laws generally provide broad guidelines regarding how charter schools will be held accountable for fulfilling the goals and objectives articulated in their charters while leaving authorizers the discretion and responsibility to develop an adequate renewal decision-making process. Charter schools are also required to participate in federally required monitoring and accountability processes. As with most issues, the manner in which charter schools are held accountable for educating students with disabilities and participating in federal and state monitoring processes is dictated by individual states and specifically by the charter school's legal status and linkage to an LEA.

SECTION 4:

NON-RENEWAL, REVOCATION AND RELINQUISHMENT

What is the meaning of the terms non-renewal, revocation and relinquishment as used in this primer?

- **NON-RENEWAL** is what occurs when a charter school seeks renewal and the authorizer does not grant the charter school a new charter (or renew its current charter). As a result of not having its charter renewed, the charter school loses its authority to operate and can no longer exist as a public school.
- **REVOCATIONS** occur when an authorizer proactively (prior to a regular renewal process) removes or terminates a school's charter and consequently, its legal authority to operate as a public school because the charter school has failed to meet the obligations articulated in its charter or contract with the authorizer.
- **RELINQUISHMENT** is a voluntary release or surrender of an authorized charter by the charter school's governing board, in contrast to a revocation, which is initiated by an authorizer. Relinquishments may occur either prior to, or after, a school's opening.

If a charter school ceases to exist, what has to be considered relative to students with disabilities?

To ensure appropriate procedures will be followed in the event of a closure, authorizers should require that specific responsibilities for student records and the allocation of other school property are addressed in the application process and subsequently codified in the school's charter or contract with the authorizer. When a charter school is closed, the charter school board has an obligation to ensure that student records are sent to the school to which students will be transferred. In instances where the charter school is part of the local education agency, the responsibility to maintain student records may revert to the district in which the charter school was located. Authorizers should work with boards of closed charter schools to ensure that records are handled appropri-

ately. If there is no known school of transfer for the child, the authorizer should seek counsel from the SEA regarding the appropriate transfer of student records.

Authorizers will also need to ensure that there is a specific accounting for special education funds. Special education programs receive funding from federal, state and local sources. As such, dismantling a special education program requires careful accounting of how special education dollars were spent and the disposition of materials and equipment purchased with special education dollars.

In the case of revocation or relinquishment, how should charter schools dispose of any special equipment that was purchased for students with disabilities?

Most state charter school laws dictate how a charter school's assets are to be distributed should the school close. In general, special equipment purchased for a student with a disability should follow the child to his or her next public school placement or alternatively, be returned to the local district that is the student's district of residence. Disposing of equipment purchased with federal special education dollars is dictated by federal requirements that may be different from what is typically articulated in a charter contract. Authorizers should check state and federal requirements for disposal or transfer of equipment purchased with state or federal special education money.

In the case of school closure, are there special procedures for handling special education files?

All students' educational records are protected by the Family Educational Rights Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99 that stipulates how the records are to be handled appropriately. Charter school personnel are responsible for closing and preparing files for transfer to either the next school or the LEA or SEA special education office in

accord with these regulations. Information about FERPA is available online at www.ed.gov/policy/gen/guid/fpco/ferpa/index.html

Brochures for schools and parents are available at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html>.

Do charter schools have any legal obligation to their students with disabilities after the school closes?

At a minimum, charter schools are obligated to transfer records. Charter schools staff may be requested to participate in IEP staffing meetings at schools in which the students enroll after leaving the charter school.

Summary and Key Points

The non-renewal, revocation, or relinquishment of a charter is at best an unpleasant experience and at worst, highly contentious and politically charged. Regardless of how unlikely a school closure may appear, ensuring the proper transfer of student records and appropriate disposition of all assets in the event of closure, including those specifically for special education is a responsibility for which authorizers must always be prepared. Regardless of the environment in which a school closes, authorizers are responsible for ensuring that the necessary steps are taken to protect students' rights to privacy and maintain the integrity of records. Establishing the procedures for closing a school, including special education considerations, should be incorporated into the initial charter contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

SECTION 5: TECHNICAL ASSISTANCE AND RESOURCES

Providing special education in charter schools, not unlike traditional public schools, is challenging for a variety of reasons, and amassing the capacity to deliver special education requires early and ongoing technical assistance related to the complex requirements stemming from IDEA. Although they vary in how they perceive their relationship to the schools they charter, authorizers can play a critical role in not only informing charter schools of their responsibilities related to special education, but also in serving as a source of information regarding where charter schools can obtain technical assistance. Charter schools can tap into a variety of networks to learn more about special education in general and issues related to special education in charter schools specifically. Following is a partial list of resources that authorizers should be familiar with and to which they may direct potential charter applicants.

Local Education Agencies

States delegate their responsibility for providing a free appropriate public education for students with disabilities to local education agencies. As part of this responsibility, LEAs generally offer district schools technical assistance in the form of documents and training. Many districts maintain websites with abundant resources related to special education. While not catering specifically to charter schools, district special education technical assistance can be invaluable to charter developers interested in learning more about special education.

Regional Technical Assistance Networks

Many states operate regional technical assistance networks designed to provide, among other services, special education technical assistance. Examples of these networks are the Education Service Centers in Texas, Intermediate School Districts in Michigan and Boards of Cooperative Education

Services (BOCES) in Colorado. As public schools, charter schools should have access to these networks. Contact your state department of education's division of special education for information regarding your state's unique regional technical assistance network.

State Charter School Support Organizations

Most states with charter schools operate a charter school resource center or an association that supports the development and operation of charter schools. A number of these resource centers have developed technical assistance guidance related to special education. Authorizers should be familiar with the services available through a charter school resource center or association and encourage the schools they charter to take advantage of them. For a comprehensive listing of state support organizations, see www.charterfriends.org

State Departments of Education

State departments of education can be a rich source of general information regarding special education and, in some cases, specific information regarding special education in charter schools. Most states with charter school laws maintain a designated web page for charter schools. Most states also maintain a web page for special education. For example, the Colorado Department of Education offers the following documents on its charter school website www.cde.state.co.us/index_charter.htm

- *Sample Special Education Compliance Plan*
- *Colorado Charter Schools Special Education Guidebook*
- *Fast Facts—How is Special Education Provided in Charter Schools in Colorado?*
- *Report on Special Education Services in Colorado Charter Schools*
- *Special Education Guidelines for Negotiating a Charter Contract*

U.S. Department of Education

Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. OSEP maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education www.ed.gov/about/offices/list/osep/index.html?src=mr. Another office that has more general resources for charter schools is the Office of Innovation and Improvement www.ed.gov/about/offices/list/oii/index.html?src=oc.

Establishing the procedures for closing a school, including special education considerations, should be incorporated into the initial charter contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

National Charter School Authorizer Network

- **NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS (NACSA)** is a nonprofit membership association of educational agencies across the country that authorize and oversee public charter schools. Created in 2000 by a diverse group of charter school authorizers nationwide, NACSA is dedicated to supporting and strengthening the capacities of authorizers to charter successful schools. It provides many resources of significant value to charter school authorizers through its website at www.qualitycharters.org.

National Special Education Networks

- **NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION (NASDSE)** provides a wide range of information regarding special education including research reports and technical assistance documents pertaining to special education in charter schools www.nasdse.org.
- **NATIONAL INFORMATION CENTER FOR CHILDREN AND YOUTH WITH DISABILITIES (NICHCY)** is an information and referral center that provides free information on dis-

abilities and disability-related issues. Children and youth with disabilities (birth to age 22) are NICHCY's special focus www.kidsource.com/NICHCY.

National Charter School Networks

- **US CHARTER SCHOOLS'** website contains extensive information about charter schools, including research reports, state contacts and upcoming events related to charter schools www.uscharterschools.org.
- **CENTER FOR EDUCATION REFORM** provides up-to-date information about state charter school laws www.edreform.com.

CLOSING THOUGHTS

Policy Tension

The SPEDTACS Primers are offered to assist in the successful inclusion of students with disabilities in charter schools and avoid the problems that could arise as a result of inadequate awareness of the requirements in federal special education laws. There is also an overriding climate issue that must be taken into account to achieve these goals, i.e., the policy tension between charter schools and special education that can give rise to conflict. The charter school concept is driven in part by the desire to allow educators the freedom to be innovative about teaching and learning, but this can be difficult to do while remaining in compliance with a highly prescriptive federal statute such as IDEA. In the area of special education, charter schools must juggle autonomy and compliance that at times can feel like fitting a square peg into a round hole.

The challenge for charter school educators is to be creative about how they serve students with disabilities in a way that preserves the students' right to a free appropriate public education.

One example of the tension between the autonomy of a charter school and federal special education law can be seen in the opposing pull between parental choice and the team decision making requirement in federal and state special education law. A central tenet of IDEA is that a team made up of professionals and the parent determines what is in the best educational interest of the child. The nature and intensity of special education services and the setting in which they will be delivered rest with the Individualized Education Program (IEP) team.

Charter schools challenge that foundational decision-making principle of special education by asserting the primacy of parental choice. Because they have been created to offer educational choices to parents, charter schools assume that parents should be able to freely make choices about where and how their child is educated.

Thus, the foundation of parental choice is in tension with the notion of shared decision making that operates within special education. This tension is part of the climate for charter schools and its challenges must be understood by all involved. Should parents be allowed to enroll their child in a charter school even if the IEP team suggests that this is not the setting in which the child would be best served? Which tenet takes precedence—the right of the parents to choose the educational setting for their child, or the right of the IEP team to determine how and where a student with a disability may be best served?

Charter school authorizers, operators and board members must understand and acknowledge these tensions and strive to identify operational solutions. The challenge is to attain a balance that is appropriate to the issue, i.e., to deliver special education services in an innovative way that complies with federal special education law and to work together with parents as important members of the IEP team to determine the best educational services and setting for their child. The challenge for charter school educators is to be creative about how they serve students with disabilities in a way that preserves the students' right to a free appropriate public education.

Remaining Current

It is important to note that federal laws such as the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (amended by the No Child Left Behind Act) are subject periodically to mandated “reauthorization,” that is, a Congressional review that usu-

ally brings changes. Sometimes the changes are extensive and their effects evolve over time, as continues to be true of the implementation of the NCLB amendments adopted in 2002. So, it is imperative that all those involved with charter schools, especially state education agencies and authorizers, be prepared to provide the necessary technical assistance to charter school so they can access the most current legislative information and remain in compliance.

Keeping printed materials, such as these Primers, up-to-date and widely disseminated is a daunting challenge. Modern technology, however, offers a solution that the SPEDTACS team used in the final activity of its project. The content of these primers is available with an Internet-based set of training modules at www.uscharterschools.org/specialedprimers. The web content is regularly updated to reflect changes in laws and regulations related to special education in charter schools.

APPENDIX 1

Glossary

PART 1: ACRONYMS

ADA	Americans with Disabilities Act
AYP	Adequate Yearly Progress
ADHD	Attention Deficit Hyperactivity Disorder
CEC	Council for Exceptional Children
CSP	Charter Schools Program (of the U.S. Department of Education)
ED	U. S. Department of Education
EIS	Early Intervening Services (could also be Early Intervention Services - See Definitions)
EMO	Educational management organization
FAPE	Free appropriate public education
FERPA	Family Educational Rights and Privacy Act
FRC	Federal Resource Center
504	Section 504 of the Rehabilitation Act of 1974
IDEA	Individuals with Disabilities Education Act
IEP	Individualized education program
IFSP	Individualized Family Service Plan
LEA	Local education agency (school district)
LRE	Least restrictive environment
NACSA	National Association of Charter School Authorizers
NAEP	National Assessment of Education Progress
NAPCS	National Alliance for Public Charter Schools
NASDSE	National Association of State Directors of Special Education
NCLB	No Child Left Behind Act: the most recent reauthorization of the Elementary and Secondary Education Act (ESEA)
NICHCY	National Information Center for Children and Youth with Disabilities
NRT	Norm-referenced test
OCR	Office for Civil Rights
OSEP	Office of Special Education Programs
PACER	Parent Advocacy Coalition for Educational Rights
RRC	Regional Resource Center
RTI	Response to Intervention (See definitions)
SEA	State education agency

PART 2: DEFINITIONS**ACCOMMODATIONS**

Changes in the administration of an assessment, such as setting, scheduling, timing, presentation format, response mode, or others, including any combination of these, that do not change the construct intended to be measured by the assessment or the meaning of the resulting scores. Accommodations are used for equity, not advantage, and serve to level the playing field for a student with a disability. To be appropriate, assessment accommodations must be identified in the student's Individualized Education Program (IEP) or Section 504 plan and used regularly during instruction and classroom assessment.

ACHIEVEMENT TEST

An instrument designed to efficiently measure the amount of academic knowledge and/or skill a student has acquired from instruction. Such tests provide information that can be compared to either a norm group or a measure of performance.

ADEQUATE YEARLY PROGRESS

Adequate Yearly Progress (AYP) is the minimum level of improvement that states, school districts and schools must achieve each year. It is an individual state's measure of yearly progress toward achieving state academic standards required by NCLB.

AGGREGATION

The total or combined performance of all students for reporting purposes.

ALIGNMENT

The similarity or match between or among content standards, curriculum, instruction, and assessments in terms of knowledge and skill expectations.

ALTERNATE ASSESSMENT

The term used for tests that gather information on the standards-based performance and progress of students whose disabilities preclude their valid and reliable participation in general assessments. Alternate assessments measure the performance of a relatively small population of students who are unable to participate in the general assessment system, with or without accommodations, as determined by the IEP Team. There are different types of alternate assessments

a state may adopt under the NCLB requirements. First, states must make available an alternate assessment based on grade level achievement standards. Then, there are two other alternates states may develop: the "alternate assessment based on alternate achievement standards" designed for students with the most significant cognitive disabilities and the "alternate assessment based on modified achievement standards" for students who cannot be expected to achieve grade level standards within one school year and who need a less complex assessment to demonstrate their knowledge of those standards.

ASSESSMENT

The process of collecting information about individuals, groups, or systems that relies upon a number of instruments, one of which may be a test. Therefore, assessment is a more comprehensive term than test.

ASSISTIVE TECHNOLOGY DEVICE

Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device [34 CFR §300.5].

ASSISTIVE TECHNOLOGY SERVICE

Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device [34 CFR §300.6]. It includes evaluation, purchasing, training and other services related to the acquisition and use of such devices.

ATTENTION DEFICIT HYPERACTIVE DISORDER (ADHD OR ADD)

A condition with the principal characteristics of inattention, hyperactivity, and impulsivity. It becomes apparent in some children in the preschool and early school years and can continue into adulthood. These symptoms appear early in a child's life. Because many normal children may have these symptoms, but at a low level, or the symptoms may be caused by another disorder, it is important that the child receive a thorough examination and appropriate diagnosis by a well-qualified professional. Under IDEA, a child may be eligible for special education under the category of other

health impairment [34 CFR §300.9(i)].

AUTHORIZER

The office or organization that accepts applications, approves, exercises oversight and, after the period of approval, decides on renewal or revocation of a charter school. Some states use different terms for this role, e.g., sponsor.

AUTISM

According to the 2006 IDEA regulations 34 CFR §300.8(2) (c): (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

BIAS (TEST BIAS)

In a statistical context, bias is a systematic error in a test score. In discussing test fairness, bias is created by not allowing certain groups into the sample, not designing the test to allow all groups to participate equitably, selecting discriminatory material, testing content that has not been taught, etc. Bias usually favors one group of test takers over another, resulting in discrimination.

CHARTER SCHOOLS

Charter schools are independent public schools designed and operated by educators, parents, community leaders, educational entrepreneurs and others. They are authorized/sponsored by designated local or state educational organizations who monitor their quality and effectiveness, but allow them to operate outside of the traditional system of public schools. Most states use the term "charter school" although there are other terms in use for this type of school, such as "community school" used in Ohio and "public school academy" in Michigan.

CHILD WITH A DISABILITY

A child evaluated in accordance with IDEA regulations §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services [34 CFR §300.8(a)(1)]. (See also **STUDENT WITH A DISABILITY**)

CRITERION-REFERENCED TESTS (CRT)

A test that measures specific skill development as compared to a predefined absolute level of mastery of that skill.

CURRICULUM-BASED ASSESSMENTS

Assessments that mirror instructional materials and procedures related to the curriculum resulting in an ongoing process of monitoring progress in the curriculum and guiding adjustments in instruction, remediation, accommodations, or modifications provided to the student.

DEAF-BLINDNESS

Deaf blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness [34 CFR §300.8(c)(2)].

DEAFNESS

A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance [34 CFR §300.8(c)(2)].

DEVELOPMENTAL DELAY

Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may include a child: (1) Who is experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or

more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) who, by reason thereof, needs special education and related services [34 CFR §300.8(b)].

In addition: A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five). A state may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction. If an LEA uses the term developmental delay for children described in §300.8(b), the LEA must conform to both the state's definition of that term and to the age range that has been adopted by the state. If a state does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part [34 CFR §300.111(b)].

DISAGGREGATED

"Disaggregate" means to separate a whole into its parts. Under NCLB, this term means that test results are sorted into groups of students who are economically disadvantaged, from racial and ethnic minority groups, have disabilities, or have limited English fluency.

EARLY INTERVENING SERVICES

Early Intervening Services (EIS) is a new section of the 2004 reauthorization of the IDEA that provides that an LEA may use not more than 15 percent of the amount the LEA receives under Part B of the IDEA in combination with other amounts (which may include amounts other than education funds) to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment [34 CFR §300.226].

EARLY INTERVENTION SERVICES

The term 'early intervention' is used to describe the programs and services provided to infants and toddlers under Part C of

IDEA who are experiencing developmental delays or have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

EMOTIONAL DISTURBANCE

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems. (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c) (4)(i) of this section [34 CFR §300.8(c)(4)].

ERRORS OF MEASUREMENT

The differences between observed scores and the theoretical true score, the amount of uncertainty in reporting scores, the degree of inherent imprecision based on test content, administration, scoring, or examinee conditions within the measurement process that produce errors in the interpretation of student achievement.

EXTENDED STANDARDS

Content standards that have been expanded while maintaining the essence of the standards, thereby ensuring that all students with significant cognitive disabilities have access to, and make progress in, the general curriculum.

FREE APPROPRIATE PUBLIC EDUCATION

Special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA; (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of IDEA §§300.320 through 300.324 [34 CFR §300.17].

HEARING IMPAIRMENT

An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section [34 CFR §300.8(c)(5)].

HIGH STAKES TESTING

A test for which important consequences are attached to the results for students, teachers, schools, districts, and/or states. Consequences may include promotion, graduation, rewards, or sanctions.

INCLUSION

Under special education, an approach that stresses educating students with disabilities, regardless of the type of severity of that disability, in the regular classrooms of their neighborhood schools and delivering special education and related services within the classroom to the extent possible.

INDIVIDUALIZED EDUCATION PROGRAM

An IEP is a written statement for a child with a disability that is developed, reviewed and revised in a meeting in accordance with IDEA regulations.

INDIVIDUALIZED FAMILY SERVICE PLAN

An IFSP is a written plan for providing early intervention services to infants and toddlers eligible under Part C of IDEA.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

IDEA is the major federal law related to special education that provides funding to states and sets specific procedural requirements for the identification and education of students with disabilities.

LEAST RESTRICTIVE ENVIRONMENT

The IDEA requires that, to the maximum extent appropriate, school districts must educate students with disabilities in the least restrictive environment (LRE), i.e., in the regular classroom with appropriate aids and supports (referred to as "supplementary aids and services") along with their non-disabled peers in the school they would attend if not disabled, unless a student's individualized education program (IEP) requires some other arrangement. For further details on this concept, see the IDEA regulations at 34CFR §§ 114 through 120.

LINKAGE

The type of connection that is mandated by state law or voluntarily established between a charter school and a traditional LEA.

LOCAL EDUCATION AGENCY (LEA)

A public institution (often referred to as a school district) that has administrative control and direction of one or more public elementary or secondary schools. The term includes a public charter school that is established as an LEA under state law.

MATRIX SAMPLING

A measurement technique organizing a large set of test items into a number of relatively short item subsets, each of which then is administered to a subsample of test takers, thereby avoiding the need to administer all items to all examinees.

MENTAL RETARDATION

Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance [34 CFR §300.8(c)(6)].

MINIMUM N

There are two ways in which the term "minimum n" is used under NCLB requirements:

- 1) the smallest number of students a state has determined can produce statistically reliable results for a subgroup, or
- 2) the smallest number of students to be included in public reporting that will not violate the requirements of confidentiality for the students involved.

MODIFICATION

A change to the testing conditions, procedures, and/or formatting so that measurement of the intended construct is no longer valid and the score cannot be aggregated with scores from tests administered under standard conditions.

MULTIPLE DISABILITIES

Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated

in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness [34 CFR §300.8(c)(7)]

NATIONAL ASSESSMENT OF EDUCATION PROGRESS

NAEP, conducted since 1969, is the only nationally representative and continuing assessment of what American students know and can do in various subject areas. Students with disabilities participate according to NAEP criteria. (For a copy of the criteria, see <http://nces.ed.gov/nationsreportcard>).

NORM-REFERENCED TESTS (NRT)

A standardized test designed, validated, and implemented to rank a students' performance by comparing that performance to the performance of that student's peers.

OFFICE OF SPECIAL EDUCATION PROGRAMS

OSEP is that section of the U. S. Department of Education that is responsible for the implementation of the IDEA. It carries out activities related to state eligibility for IDEA funds and monitoring state compliance with IDEA requirements.

ORTHOPEDIC IMPAIRMENT

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures) [34 CFR §300.8(c)(8)]

OTHER HEALTH IMPAIRMENT (OHI)

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that-- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (ii) Adversely affects a child's educational performance [34 CFR §300.8(c)(9)].

OUT-OF-LEVEL TESTING

Out of level testing is a term applied to the administration of a test designed for a level above or below a student's present grade level to enable the student to be assessed at the level of instruction rather than the level of enrollment. This type of test is not allowed under NCLB requirements.

PORTFOLIO ASSESSMENT

An organized collection or documentation of student-generated or student-focused work typically depicting the range of individual student skills that is evaluated and graded according to an established set of criteria.

QUALIFIED PERSONNEL

Under IDEA, qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

RELATED SERVICES

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training [34 CFR §300.34(a)].

RESPONSE TO INTERVENTION (RTI)

RTI is a practice of providing high-quality instruction and intervention matched to student needs using data on the child's learning rate and level of performance to make important educational decisions about the necessity for more intense interventions or as part of evaluating eligibility for special education.

RELIABILITY

The consistency of the test instrument, i.e., the extent to which it is possible to generalize a specific behavior observed at a specific time by a specific person to observations of similar behavior at different times or by different behaviors.

SPECIAL EDUCATION

Special education means specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability, including-- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education. (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a) (1) of this section: (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education [34CFR §300.39(a)].

SPECIFIC LEARNING DISABILITY (SLD)

The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage [34 CFR §300.8(c)(10)].

SPEECH OR LANGUAGE IMPAIRMENT

A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance [34 CFR §300.8(c)(11)].

STANDARDIZED TEST

A standardized test is a test is administered with the same directions and under the same conditions (time limits, etc.) and is scored in the same manner for all students to ensure the comparability of scores. Standardization allows reliable and valid comparison to be made among students taking the

test. The two major types of standardized tests are norm-referenced and criterion-referenced.

STANDARDS

The term standards is used in many different ways in education. As used under the NCLB law and regulations, there are two types of standards:

1. academic content standards - the basis of the general education curriculum covering what all students are expected to know and be able to do. These standards apply to all types of assessment for NCLB including alternate assessments.
2. academic achievement standards - the degree of proficiency students demonstrate about what they know and are able to do in each of the content areas.

There are three subtypes of academic achievement standards:

- a) grade level achievement standards;
- b) alternate achievement standards for students with the most significant cognitive disabilities (performance criteria for a small percent of students that must be aligned with the regular academic achievement standards); and
- c) modified achievement standards (performance criteria aligned with regular academic achievement standards for an additional group of students who can make progress toward grade-level achievement standards but may not reach them in the same timeframe as other students).

STANDARDS-BASED ASSESSMENTS

Assessments constructed to measure how well students have mastered specific content standards or skills.

STANDARDS-BASED IEP

A process and a document that is framed by state standards and that contains goals aligned with, and chosen to facilitate the student's achievement of, state grade-level academic standards.

STATE EDUCATION AGENCY

An SEA is the component of state government that is primarily responsible for the state supervision of public elementary and secondary schools.

STUDENT (CHILD) WITH A DISABILITY

In the Individuals with Disabilities Act, a child with a disability is defined as “a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.”

Section 504 of the Rehabilitation Act of 1973 defines a “handicapped person” (outdated terminology) as “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.”

TRANSITION SERVICES

A coordinated set of activities for a child with a disability that:

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes:
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special educa-

tion [34CFR §300.43].

Under the section on the IEP, the IDEA law also provides that:

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals [34CFR §300.320(a)(7)(b)].

TRAUMATIC BRAIN INJURY

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma [34 CFR §300.8(c)(12)].

VALIDITY

The extent to which a test measures what it was designed to measure. Multiple types of validity exist. Common types of validity include the following:

Construct validity: The extent to which the characteristic to be measured relates to test scores measuring the behavior in situations in which the construct is thought to be an important variable.

Content validity: The extent to which the stimulus materials or situations composing the test call for a range of responses that represent the entire domain of skills, understandings, or behaviors that the test is intended to measure.

Convergent validity: The extent to which the assessment results positively correlate with the results of other measures designed to assess the same or similar constructs.

Criterion-related validity: The extent to which test scores of a group or subgroup are compared to other criterion measures (ratings, classifications, other tests) assigned to the examinees.

Face validity: Concept based on a judgment concerning how relevant the test items appear to be, it relates more to what a test appears to measure than to what the test actually measures.

VISUAL IMPAIRMENT INCLUDING BLINDNESS

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. [34 CFR §300.8(c)(13)].

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